

Hearing Date and Time: August 16, 2019 at 10:00 am (Prevailing Eastern Time)
Objection Date and Time: August 7, 2019 at 4:00 pm (Prevailing Eastern Time)

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affiliates and Transform Holdco LLC*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION,
et al.,

Debtors.¹

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR-Rover De Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF ESL INVESTMENTS,
INC. AND TRANSFORM HOLDCO LLC TO DEBTORS' PLAN SUPPLEMENT**

ESL Investments, Inc. and certain of its affiliated entities (including JPP, LLC and JPP II, LLC) (collectively, "ESL") in their capacities as creditors of Sears Holdings Corporation and certain of its affiliates (collectively, "Sears" and with respect to its Chapter 11 affiliates, the "Debtors"), and Transform Holdco LLC ("Transform"), the buyer under the Asset Purchase Agreement (as defined in the Plan), by their undersigned counsel, hereby submit this objection and reservation of rights (the "Limited Objection") pursuant to section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") with respect to the Debtors' *Notice of Filing of Plan Supplement in Connection with Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors* (the "Liquidating Trust Agreement Plan Supplement") [Docket No. 4703] dated as of August 2, 2019. In support of this Limited Objection, ESL and Transform respectfully state as follows:

PRELIMINARY STATEMENT AND BACKGROUND

1. On July 9, 2019, the Debtors filed the *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors* (the "July 9, 2019 Plan") [Docket No. 4476].

2. On August 2, 2019, a mere three hours before the deadline to object to the Plan (as defined below), the Debtors filed the *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors* (the "Plan" or the "Revised Plan") [Docket No. 4704] and the accompanying Liquidating Trust Agreement Plan Supplement, setting the objection deadline to the Liquidating Trust Agreement Plan Supplement as August 7, 2019 at 4:00 p.m. (Eastern Time).

3. On August 2, 2019, ESL and Transform filed the *Limited Objection and Reservation of Rights of ESL Investments, Inc. and Transform Holdco LLC to Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors* (the “Limited Plan Objection of ESL and Transform”) [Docket No. 4718]. Following agreement with the Debtors, a revised and unredacted version of the Limited Plan Objection of ESL and Transform was filed on August 6, 2019 [Docket No. 4759].

4. ESL and Transform object to the changes made in the July 9, 2019 Plan and reflected in the Liquidating Trust Agreement Plan Supplement with regards to the treatment of Disputed Claims.²

ARGUMENT

5. The Liquidating Trust Agreement Plan Supplement and the Revised Plan made significant changes to the treatment of a Disputed Claim and the Disputed Claims Reserve. Plan at 64; July 9, 2019 Plan at 63; Liquidating Trust Agreement Plan Supplement at 13-17.

6. Without explanation or justification, the Revised Plan and the Liquidating Trust Agreement Plan Supplement limits the distributions on account of a Disputed Claim to the Disputed Claims Reserve. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, recoveries should not be limited to only those assets available in the Disputed Claims Reserve.

7. As stated in the Limited Plan Objection of ESL and Transform, ESL and Transform continue to reserve all rights, including but not limited to, a) Transform and the Debtors’ respective obligations under the Asset Purchase Agreement and b) all rights relating to the ESL 507(b) Priority Claims, including the right to appeal this Court’s rulings with respect to the treatment of

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan

the ESL 507(b) Priority Claims and the ESL 507(b) Cap. In addition, ESL and Transform reserve all rights with regards to the treatment of Disputed Claims. ESL and Transform further reserve the right to supplement this Limited Objection.

CONCLUSION

8. For the reasons stated above, ESL and Transform seek modifications to address the issues described herein, and for the Court to grant such other and further relief that it deems just and appropriate.

Dated: August 7, 2019
New York, New York

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